

RECEIPT NUMBER

509394

12 pg 2  
ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Oak Point Investments, Inc.,

Plaintiff,

vs.

May, Davis Group, Inc., and  
Owen May, jointly and severally,

Defendants.

JUDGE : Edmunds, Nancy G.  
DECK : S. Division Civil Deck  
DATE : 06/23/2004 e 14:48:56  
CASE NUMBER : 2:04CV72330  
CMP OAK POINT INVEST INC V MAY  
DAVIS GRP INC ET AL (DQH)

MAGISTRATE JUDGE R. STEVEN WHALEN

FITZGERALD & DAKMAK, P.C.  
GERALD F. FITZGERALD, JR. (P13490)  
Atty. for Plaintiff  
615 Griswold, Ste. 600 Ford Bldg.  
Detroit, MI 48226  
313-964-0800/964-0581

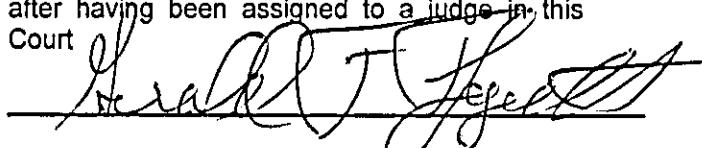
U.S. DIST. COURT CLERK  
EAST DIST. MICH.  
DETROIT-PSG

.04 JUN 23 P2 51

PED

COMPLAINT

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this Court



NOW COMES Oak Point Investments, Inc. ("Oak Point"), by and

through its attorneys, Fitzgerald & Dakmak, P.C., states as follows:

1. Oak Point is a Michigan corporation with its principal place of business in Southfield, Michigan.

2. May, Davis Group, Inc. ("May Davis Group") is a Delaware corporation with its principal place of business located at 14 Wall Street, Ste. 1615, New York, New York 10005-2136.

3. Owen May is a resident of the State of New Jersey and resides at 430 Next Day Hill Drive, Englewood, New Jersey 07631-1924.

4. That this Court has personal jurisdiction over the aforementioned Defendants pursuant to MCL 600.705 as incorporated through FRCP 4(k)(1)(A).

5. That this Court has subject matter jurisdiction over this matter pursuant to 28 USC §1332.

6. That venue is proper in this Court pursuant to 28 USC §1391(a)(2).

**COUNT I: ACTION ON PROMISSORY NOTE**

7. Plaintiff reincorporates by reference paragraphs 1 through 6 above.

8. On or about January 5, 1998, the May Davis Group and Owen May executed a Promissory Note and Promissory Agreement in which they promised to pay \$1,000,000.00 to Oak Point, together with interest at the rate of 8% per year to be due and payable on December 31, 2002. See attached

**Exhibit A.**

9. Owen May executed the Promissory Note, on behalf of himself personally and May Davis Group and delivered the Promissory Note to the Plaintiff for value.

10. Owen May executed the Promissory Note, and in doing so waived presentment, demand and notice to Owen May and to May Davis Group, Inc.

11. That the Plaintiff still owns and holds the Promissory Note, and upon information and belief there remains unpaid a principal balance of \$429,123.37, as \$570,876.63 of the principal has been repaid.

12. That upon information and belief, the Plaintiff has not received any payments of principal or interest since September 2001.

13. That upon information and belief, the Defendants defaulted upon the Promissory Note on October 5, 2001.

14. That pursuant to the terms of the Promissory Note, in the event of default, the Defendants are liable for the attorney's fees that the Plaintiff incurs in collecting upon the Promissory Note.

15. That pursuant to the terms of the Promissory Note, in the event of default, the default rate of interest increases to ten (10%) percent.

16. That pursuant to the terms of the Promissory Note, interest has been accruing at 10% since October 5, 2001. Therefore, as of June 5, 2004, upon information and belief, the total amount of principal and interest due on the Promissory Note was \$558,182.23.

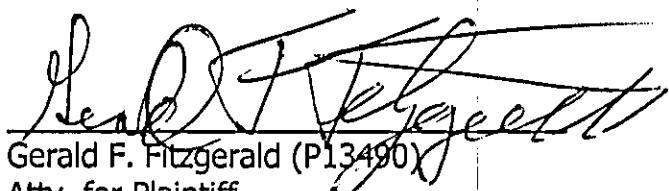
17. That despite demand, the Defendants have failed to repay the amount owing on this Promissory Note. See attached **Exhibit B**.

**WHEREFORE**, Plaintiff, respectfully requests that this Court enter a Judgment in favor of Oak Point against Owen May and May Davis Group, jointly and severally, in the amount of \$558,182.23 plus interest from June 5, 2004, at the rate of ten percent, in addition to costs and attorney fees that the Plaintiff is contractually entitled to.

Respectfully submitted,

FITZGERALD & DAKMAK, P.C.

By:

  
Gerald F. Fitzgerald (P13490)  
Atty. for Plaintiff  
615 Griswold, Ste. 600 Ford Bldg.  
Detroit, MI 48226  
(313) 964-0800/964-0581

Date: June 8, 2004

cs-98 06:03P may davis group

w

4109628776

P.03

## Promissory Note

\$1,000,000

FOR VALUE RECEIVED, the May Davis Group (the "Maker"), having an address at 1 World Trade Center, Suite 8735, New York, New York 10048, promises to pay to the order of Oak Point Investments, Inc., a corporation with its principal place of business at 15700 W. Ten Mile Road, Suite 111, Southfield, MI 48075 ("Payee") or such other place as designated by the Payee, the sum of \$1,000,000 together with interest at the rate of 8.0% per annum to be due and payable on December 31, 2002.

All computations of interest under this Note shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable.

The Maker has the right to prepay this Note without premium or penalty, in whole or part at any time after the date hereof. Each and every payment on this Note shall be credited first to interest to that date on the term remaining principal amount, and the remainder to principal.

Whenever any payment to be made hereunder shall be stated to be due on a Saturday, Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of New York (any other day being a "Business Day"), such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

The Maker shall be in default if the Maker fails to make any payment pursuant to the terms of this Note. In the event of default by the Maker, Payee may declare the principal of and all accrued interest on this Note due and payable without presentment, demand, protest, or other notice, all of which are expressly waived, and shall have all the other rights, privileges, powers and remedies provided to creditors by law. In such event, the Makers become liable for the entire principal and interest due on the Note and such further amount as shall be sufficient to cover the cost of collection, including but not limited to reasonable attorney's fees. If Maker is in default under this Note interest shall accrue at the rate of 10% from the date of default.

A waiver of any provision of this Note shall be in writing, shall apply to the particular instance or instances and at the particular time or times only, and shall not be deemed to be a continuing waiver.

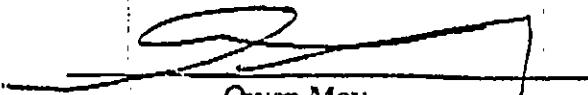
If this Note shall be placed in an attorney's hands for collection, or collected by a suit or through a bankruptcy or probate, or any other Court, either before or after maturity, there shall be paid to the holder of this Note, reasonable attorney's fees, costs, and other expenses incurred by the holder in enforcing the terms of this Note.



The Maker shall promptly correct, or cause to be corrected any defect or error that may be discovered in this Note or in the execution, acknowledgements or recordation thereof and execute, acknowledge and deliver, and record and re-record, file and re-file, and register and re-register, any and all such further acts, deeds, conveyances, mortgages, deeds of trust, trust deeds, assignments, estoppel certificates, financing statements and continuations thereof, notices of assignments, transfers, certificates, assurance and other instruments as the Purchaser may require from time to time in order to carry out more effectively the purposes of this Note.

This Note shall be governed by, and construed in accordance with the laws of the State of New York.

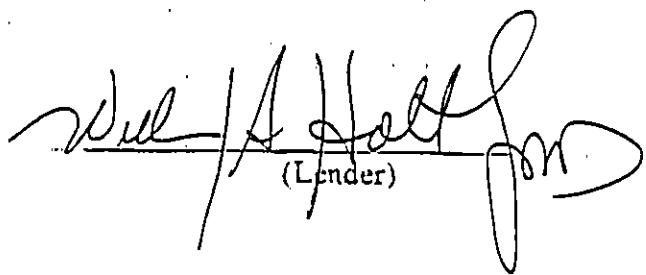
IN WITNESS WHEREOF, the undersigned has caused this note to be signed on the day and year first above written.



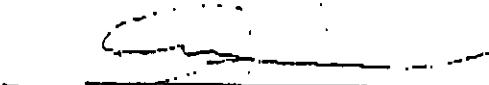
Owen May

## PROMISSORY AGREEMENT

In consideration of the sum of \$1,000,000.00 which is a loan the Oak Point Investment Inc. (lender) is providing the May Davis Group Inc. May Davis agrees to pay the sum of \$8,000.00 on or before the 5<sup>th</sup> of the month starting on February 1, 1998. Subsequent payments will be made monthly on or before the 5<sup>th</sup> of that month. The loan will be repaid as a one year note with a five year amortization (see attached). May Davis guarantees a minimal annual principal payment of \$200,000.00. May Davis will repay the principal amount of this loan at any time prior to the due date. May Davis may repay the principal amount of this loan at any time prior to the due date.



Will H. Hoff Jr.  
(Lender)



Owen May  
May Davis Group Inc.

LAW OFFICES  
**FITZGERALD & DAKMAK, P.C.**  
615 GRISWOLD, SUITE 600  
DETROIT, MICHIGAN 48226  
(313) 964-0800  
FAX (313) 964-0581

GERALD F. FITZGERALD, JR.  
GEORGE P. DAKMAK  
STUART J. SNIDER  
ROBERT A. PEURACH  
JEFFREY H. BIGELMAN

GERALD F. FITZGERALD, SR.  
(1902-1985)  
CONFERENCE FACILITY  
IN GROSSE POINTE

April 12, 2004

May Davis Group  
Attn: Owen May  
14 Wall Street  
Suite 1615  
New York, NY 10005-2136

May Davis Group  
Attn: Kevin Davis  
14 Wall Street  
Suite 1615  
New York, NY 10005-2136

**Re: Our File No.**  
**Willard S. Holt, Jr. Estate and Trust**

Gentlemen:

When I first spoke with Owen May on March 4, 2004, he advised me that he was aware of the indebtedness, but did not feel that it was anywhere near the amount we had claimed. He did, however, promise to send to me copies of the Group's financial statements as well as his own. I then spoke with Kevin Davis on March 9th. He advised me that he was never aware of any note from May Davis to Oakpoint Investments, Inc. or Dr. Willard S. Holt, Jr.; that he would not have allowed Owen May to sign a note of that nature; that he would send the May Davis Group financials to me, as well as those of Owen May, but that any action to collect the indebtedness or to assign it to other creditors would cause the termination of the May Davis Group.

That same day I spoke to Owen Davis. This time he claimed that the note was not correct; that there was another side of the ledger; that Dr. Holt had been given more than sufficient repayment on same; and that the note itself could not be included in the corporate books.

You cannot have it both ways. There is an indebtedness which is owed to Oakpoint Investments and Dr. Holt. I am sure we can work out an equitable settlement of same without the necessity of legal action. However, the estate cannot ignore an indebtedness of this size. As you are aware, I have spoken with Galt Kaufman Glaucci, CPAs, and Kempisty & Co., CPAs, relative to the absence of said note from the 2001 and 2002 annual audit reports of the SEC. I have hesitated to get back to them. However, unless this matter is resolved, we will have no choice but to proceed to collection.



FITZGERALD & DAKMAK, P.C.

Please let me hear from you upon receipt of this correspondence.

Yours very truly,

FITZGERALD & DAKMAK, P.C.

Gerald F. Fitzgerald, Jr.

GFF:cd



April 21, 2004

Gerald F. Fitzgerald, Jr.  
Fitzgerald & Dakmak, P.C.  
615 Griswold, Suite 600  
Detroit, MI 48226

Dear Mr. Fitzgerald:

I am in receipt of your letter dated April 12, 2004 addressed to Mr. Owen May and Mr. Kevin Davis of The May Davis Group .

At this time the partners are out of town on business. However, as soon as they return I shall pass your letter on to them.

I apologize for the delay in reply. I have been out on holiday and just returned today.

Sincerely,

A handwritten signature in cursive ink that appears to read "Barbara Zingalli".

Barbara Zingalli  
Secretary to Mr. May

INVESTMENT BANKERS

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14 WALL STREET, SUITE 1615 • NEW YORK, NY 10005  
(212) 871-9680 • FAX: (212) 871-9651

JS 44 11/99

**CIVIL COVER SHEET** COUNTY IN WHICH THIS ACTION AROSE: Oakland

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading, or other papers, as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**I. (a) PLAINTIFFS**

Oak Point Investments, Inc.

**04-72330****ORIGINAL****DEFENDANTS**

May, Davis Group, Inc. and Owen May, jointly &amp; severally

(b) County of Residence of First Listed

Oakland26125NANCY G. EDMUNDS  
County of Residence of First Listed New York

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(C) Attorney's (Firm Name, Address, and Telephone Number)

Fitzgerald & Dakmak, P.C., Gerald F. Fitzgerald, Jr.  
615 Griswold, Stc. 600 Ford Bldg.  
Detroit, MI 48226 (313) 964-0800/964-0581Attorneys (If Known)  
**MAGISTRATE JUDGE R. STEVEN WHALEN****II. BASIS OF JURISDICTION** (Place an "X" In One Box Only)

1 U.S. Government Plaintiff       3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant       4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PRINCIPAL PARTIES		(Place an "X" In One Box for Plaintiff and One Box for Defendant)	
PLA	DEF	PLA	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of This State		Incorporated or Principal Place of Business In This State	
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	
Citizen of Another		<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country		<input type="checkbox"/> 6	<input type="checkbox"/> 6
		Foreign Nation	

**IV. NATURE OF SUIT** (Place an "X" In One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881		<input type="checkbox"/> 430 Banks and Banking
<input checked="" type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel And Slander	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce/ICC
<input type="checkbox"/> 160 Recovery of Overpayment and Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 840 Trademark	12 LISC 3410
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DWIC/DIWV (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	
V. ORIGIN	(PLACE AN "X" IN ONE BOX ONLY)			

1 Original Proceeding       2 Removed from State Court       3 Remanded from Appellate Court

4 Reinstated or Reopened       5 (specify) \_\_\_\_\_

6 Multi district Litigation

7 Judge from Magistrate

**VI. CAUSE OF ACTION** (Check the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Action on Promissory Note

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23SUDEMAND  
558, 182.23CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  NoVIII. RELATED CASE(S) instructions:  
IF ANY

(See

JUDGE

DOCKET NUMBER

DATE

6/21/04

SIGNATURE OF ATTORNEY OF RECORD

1. Is this a case that has been previously discontinued or dismissed?

YES



If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

YES



If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

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Notes: